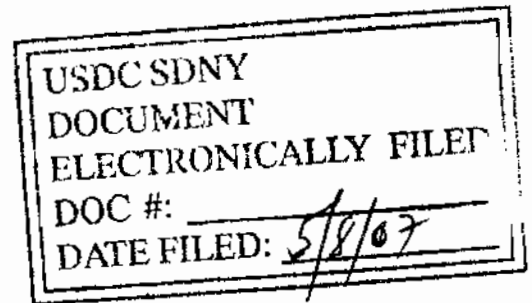


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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



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UNITED STATES OF AMERICA,

Plaintiff,

- v -

STIPULATION AND ORDER

07 Civ. 3559 LAP

APPROXIMATELY \$84 MILLION ON :
DEPOSIT IN ACCOUNT NO. T-94025 :
IN THE NAME OF THE TREASURY OF :
THE MINISTRY OF FINANCE OF THE :
REPUBLIC OF KAZAKHSTAN AT PICTET :
& CIE, GENEVA, SWITZERLAND, :
FORMERLY ON DEPOSIT IN ACCOUNT :
NO. 1017789E AT CAI INDOSUEZ, :
GENEVA, SWITZERLAND, AND ALL :
INTEREST, INCOME, BENEFITS, AND :
OTHER PROCEEDS TRACEABLE THERETO, :

Defendant in rem. :

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WHEREAS, in and before July 1999, approximately \$84 million was held on deposit in the account of Orel Capital Ltd. ("Orel") at Credit Agricole Indosuez ("CAI") in Geneva, Switzerland. Orel was a British Virgin Islands corporation beneficially owned by a Liechtenstein foundation, the sole beneficiaries of which were individuals;

WHEREAS, on or about July 29, 1999, the contents of the Orel account were transferred to an account held in the name

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LOREITA A. PRECKA
U.S. DISTRICT JUDGE
S.D.N.Y.

of the Treasury of the Ministry of Finance of the Republic of Kazakhstan at Pictet & Cie, Geneva, Switzerland;

WHEREAS, on or about August 16, 1999, the \$84 million transferred from the Orel account to the Pictet account was frozen by order of a Swiss examining magistrate;

WHEREAS, on or about April 2, 2003, Indictment 03 Cr. 404 was returned by a federal grand jury in the Southern District of New York charging defendant James H. Giffen with, *inter alia*, violation of the Foreign Corrupt Practices Act ("FCPA"), in violation of 15 U.S.C. § 78dd-2; wire fraud, in violation of 18 U.S.C. § 1343; and money laundering, in violation of 18 U.S.C. §§ 1956 and 1957;

WHEREAS, the Indictment included a criminal forfeiture allegation charging that Giffen should forfeit to the United States pursuant to 18 U.S.C. § 982 all property, real and personal, involved in the money laundering offenses and all property traceable to such property;

WHEREAS, as used herein, the "Funds" include all assets transferred from the Orel account to Account No. T-94025 in the Name of the Treasury of the Ministry of Finance of the Republic

of Kazakhstan at Pictet & Cie, Geneva, Switzerland, and all interest, income, benefits or other proceeds traceable thereto;

WHEREAS, the Funds have been restrained pursuant to a Mutual Legal Assistance Treaty request by the United States to Switzerland;

WHEREAS, upon the filing of this Stipulation and Order, the United States will have commenced the instant action seeking civil forfeiture of the Funds by the filing of a Verified Complaint, alleging that the Funds are forfeitable pursuant to 18 U.S.C. §§ 981(a)(1)(A) and 981(a)(1)(C) (the "Action");

WHEREAS, the Government of the Republic of Kazakhstan (the "Republic of Kazakhstan") claims that it is the sole beneficiary of the Funds and that the Funds are its property;

WHEREAS, the United States asserts that if it were to forfeit the Funds, in keeping with its practice of using forfeited funds, where practicable and not inconsistent with law, to restore forfeited property to victims of the underlying criminal violation or to protect the rights of innocent persons in the interest of justice, it would endeavor to have the Funds used for the benefit of the people of Kazakhstan;

WHEREAS, the Republic of Kazakhstan asserts that if it

were to obtain release of the Funds, it would endeavor to utilize the Funds for the benefit of the people of Kazakhstan;

WHEREAS, the International Bank of Reconstruction and Development (the "World Bank"), at the request of the Governments of the United States of America, the Swiss Confederation, and the Republic of Kazakhstan, has agreed to provide technical assistance and supervision for the administration of the Funds for the benefit of the Kazakh people;

WHEREAS, in furtherance of the relationship between the Governments of the United States of America, the Swiss Confederation, and the Republic of Kazakhstan, these Governments have agreed that the Funds shall be used to benefit the most needy citizens of Kazakhstan, as set forth herein;

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and between plaintiff United States of America and the Republic of Kazakhstan, that:

1. The attached Memorandum of Understanding Among the Governments of the United States of America, the Swiss Confederation, and the Republic of Kazakhstan, and each of its annexes (together, the "MOU"), are expressly incorporated into this Stipulation and Order. Should the MOU be terminated or

expire, this Stipulation and Order may be terminated by either the United States or the Republic of Kazakhstan upon written notice to the other.

2. The release of the Funds, or any portion thereof, is expressly contingent upon the establishment and implementation of the following three programs to the satisfaction of the Governments of the United States of America, the Swiss Confederation, and the Republic of Kazakhstan:

(a) a "BOTA Program", through which the Funds shall be used for the benefit of poor children in Kazakhstan through the establishment of a Kazakh foundation, known as the "BOTA Foundation," that shall be independent of the Government of the Republic of Kazakhstan, administered by a reputable international non-governmental organization, and under the supervision and monitoring of the World Bank, as set forth in the MOU;

(b) a "Public Finance Management Review Program" ("PFMR Program"), through which the Government of the Republic of Kazakhstan, with the support of the World Bank, has agreed to undertake a five-year program for

improving public financial management in Kazakhstan, as described in the MOU; and

(c) an "Extractive Industries Transparency Initiative Program" ("EITI Program"), through which the Government of the Republic of Kazakhstan, with the support of the World Bank, has agreed to prepare and implement a comprehensive strategy and action plan for transparency in the extractive industries in Kazakhstan, as described in the MOU.

3. In accordance with this Stipulation and Order and the terms of the MOU, within nine (9) months of signature of this Stipulation and Order, the Program Manager for the BOTA Foundation shall certify to the Governments of the United States of America and the Swiss Confederation that all necessary steps have been taken to establish the BOTA Foundation and engage a BOTA Program Manager. In addition, by August 31, 2007, the Government of the Republic of Kazakhstan shall provide a report to the Governments of the United States of America and the Swiss Confederation on the progress made in implementation of the PFMR and EITI Programs. If, in its individual discretion, either the Government of the United States of America or the Government of

the Swiss Confederation determines that actions taken to constitute the BOTA Program, as described in §§3.2, 3.3, 3.4, 3.5, and 3.6 of the MOU, have not been satisfactorily completed, or that the Government of the Republic of Kazakhstan has not made substantial and demonstrable progress in implementation of either the PFMR or EITI Programs, the Government of the United States of America may void or terminate this Stipulation and Order, upon written notice to the other Governments, provided that the time to comply with the conditions set forth may be extended by written agreement of all three Governments.

4. In accordance with this Stipulation and Order and the terms of the MOU, the Funds shall be released in installments to the Program Manager acting on behalf of the BOTA Foundation. At the individual discretion of either the Government of the United States of America or the Government of the Swiss Confederation, the release of any installment may be made contingent upon its satisfaction of adequate implementation of any of the programs described in Paragraph 2.

5. For each installment of the Funds to be disbursed in accordance with this Stipulation and Order, the United States shall transmit a supplemental mutual legal assistance request to

the Swiss authorities withdrawing, in part, its prior request for restraint of that portion of the Funds constituting such installment, requesting the lifting of such restraint for the purposes of execution of this Stipulation and Order, and requesting enforcement of the terms of this Stipulation and Order in lieu thereof.

6. Upon entry of this Stipulation and Order as a Final Order as provided below, the Republic of Kazakhstan shall withdraw any existing claim, appeal, or other legal action of any type that may have been instituted before a United States or foreign tribunal, court, or agency to prevent the forfeiture or disposition of the Funds, or any portion thereof, in accordance with this Stipulation and Order.

7. The Republic of Kazakhstan agrees that this Stipulation and Order shall constitute a full and complete waiver to any applicable defenses that may be available to it, including, but not limited to, statute of limitations defenses, and shall constitute consent to the waiver of all other notice of any action or right to claim the Funds.

8. Unless this Stipulation and Order is voided as provided herein, the Republic of Kazakhstan is hereby barred from

asserting any claim against the United States or the Swiss Confederation or any of their respective officers, agents or employees worldwide (including, without limitation, the United States Department of Justice and its dependencies, such as the United States Attorney's Office for the Southern District of New York, and the Federal Bureau of Investigation) in their official and individual capacities in connection with or arising out of the seizure or restraint, forfeiture, or disposition of the Funds or the commencement or prosecution of this action, including, without limitation, any claim that the United States did not have probable cause to request restraint of the Funds, that the Republic of Kazakhstan is a prevailing party or that the Republic of Kazakhstan is entitled to attorney's fees or any award of interest.

9. The Republic of Kazakhstan further agrees to indemnify and hold harmless the United States, the Swiss Confederation and any and all of their officers, agents and employees worldwide (including, without limitation, the United States Department of Justice and its dependencies, such as the United States Attorney's Office for the Southern District of New York, and the Federal Bureau of Investigation) in their official

and individual capacities, from any and all claims, including, without limitation, third-party claims, in connection with or arising out of the seizure or restraint, forfeiture, or disposition of the Funds or the commencement or prosecution of this action, and this Stipulation and Order shall constitute a written agreement to that effect.

10. It is understood that this Stipulation is conditioned upon there being no other claim filed to the Funds, or any portion thereof, that complies with 18 U.S.C. § 983 and all other applicable provisions of law, i.e., a timely filed claim that asserts an ownership interest in the Funds or any portion thereof. In the event that a claim is filed with respect to the Funds or any portion thereof and is finally determined by the Court to be valid and superior to the claim of the Republic of Kazakhstan, this Stipulation and Order shall become voidable by either the United States or the Republic of Kazakhstan and shall, if voided, be of no further force or effect.

11. If this Stipulation and Order is voided, the United States and the Republic of Kazakhstan each shall retain all rights available to it as of the date of the final execution of this Stipulation and Order.

12. In the event that (i) no claim is filed with respect to the Funds within the time period for filing a claim following the publication of notice, or (ii) a claim is filed but is resolved in any manner other than a final determination by the Court that the claim is valid and superior to the claim of the Republic of Kazakhstan, the United States shall thereafter promptly apply to the Court to approve this settlement and issue this Stipulation and Order as a Final Order in this Action. Entry of a Final Order in this Action shall also constitute a judgment by default against all other potential claimants who have not otherwise filed a claim to the Funds.

13. Upon issuance of the Final Order and the release of the last installment of the Funds in accordance with the terms of this Stipulation and Order, this Action shall be dismissed without costs and/or attorney's fees to either the United States or the Republic of Kazakhstan.

14. In the event that the Funds are not fully expended within a period of five years from the date of the entry of the Final Order, this Stipulation and Order may be terminated by either the United States or the Republic of Kazakhstan.

15. If this Stipulation and Order is terminated, the

United States and the Republic of Kazakhstan each shall retain all rights available to it as of the date of the final execution of this Stipulation and Order with respect to any portion of the Funds remaining in or which may be redeposited into the Pictet & Cie account.

16. Upon the execution of each installment payment and continuing until all of the Funds have been disbursed, the United States and the Republic of Kazakhstan shall file a notice informing the Court of each such installment payment.

17. Any assets representing a portion of the Funds released in accordance with this Stipulation and Order that are subsequently redeposited into the Pictet & Cie account pursuant to the provisions set forth in the MOU, shall be and are hereby expressly incorporated into and made a part of the Funds.

18. This Stipulation and Order is governed by the laws of the United States. The United States and the Republic of Kazakhstan agree that the exclusive jurisdiction and venue for any dispute arising between the Governments of the United States and the Republic of Kazakhstan under this Stipulation, and for any action related in any way to an indemnification under this Stipulation and Order, will be the United States District Court

for the Southern District of New York. For sole purposes of this Stipulation and Order and its enforcement, the Republic of Kazakhstan waives any and all rights it may have under the Foreign Sovereign Immunities Act of 1976, 28 U.S.C. § 1602 et seq., including, without limitation, any immunity from prejudgment seizure, arrest or attachment.

19. This Stipulation and Order shall in no way be deemed an admission of culpability, liability or guilt on behalf of any government or any of their respective officials and officers, past and present.

20. This Stipulation and Order shall in no way constitute a reflection upon the merits of any matter which has been asserted, which may have been asserted, or which may be asserted in the prosecution or defense of this Action.

21. This Stipulation and Order shall in no way constitute a reflection upon the merits of any matter which has been asserted, which may have been asserted, or which may be asserted in the prosecution or defense of the related criminal action of *United States v. James H. Giffen*, including any ancillary proceeding which may be or may have been conducted pursuant to 21 U.S.C. § 853(n).

22. The undersigned individuals signing this Stipulation and Order on behalf of the Republic of Kazakhstan represent and warrant that they are authorized by the Republic of Kazakhstan to execute this Stipulation and Order. The undersigned United States signatories represent that they are signing this Stipulation and Order in their official capacities and that they are authorized to execute this Stipulation and Order.

23. The United States and the Republic of Kazakhstan represent that each of them has obtained all consents, approvals or other acts of any kind required to be obtained or done in order to enable it lawfully to enter into this Stipulation and Order, as well as the MOU.

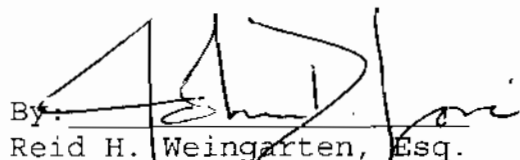
24. This Stipulation and Order, including all annexes hereto, constitutes the complete agreement between the United States and the Republic of Kazakhstan. This Stipulation and Order may not be amended except by written consent of the United States and the Republic of Kazakhstan. The Parties shall promptly notify the Court of any modification or amendment to

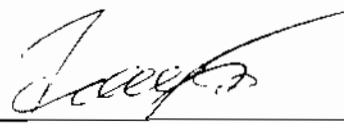
this Stipulation and Order or to the MOU.

Dated: New York, New York


May 3, 2007

STEPTOE & JOHNSON LLP
Attorneys for Claimant
Republic of Kazakhstan

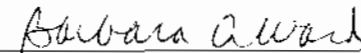
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Kanat B. Saudabayev
Ambassador of Kazakhstan
to the United States of America
On Behalf of the Republic of
Kazakhstan

SO ORDERED:


HONORABLE
UNITED STATES DISTRICT JUDGE

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Date: *May 7, 2007*